IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.1664 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

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M/S. UNIQUE ERECTORS (GUJARAT) PVT. LTD.
VERSUS
M/S.BHARAT HEAVY ELECTRICALS LTD.

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Appearance:
MR MR BHATT for petitioner
MR SD PATEL for respondent

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Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 02/02/2000

C.A.V. JUDGMENT

#. The plaintiff-petitioner prefers this civil revision application under section 115 of the Civil Procedure Code, 1908, against the order dated 20th October, 1999 of

the 3rd Extra Assistant Judge, Vadodara, in Misc. Appeal No.199 of 1993 thereunder confirming the order dated 17.3.93 passed by the 3rd Civil Judge (S.D.), Vadodara, below ex.6, in Special Civil Suit No.3 of 1989.

#. The facts of the case are that the plaintiff-petitioner filed Special Civil Suit No.3 of 1989 under the provisions of Section 20 of the Arbitration Act, 1940. Along with it, it also filed application for grant of temporary injunction. The learned trial court initially granted temporary injunction in favour of the plaintiff-petitioner restraining the defendant-respondent from encashing the bank guarantee of Rs.6 lacs. After hearing the counsel for the parties, temporary injunction granted was vacated by the learned trial court under the order dated 17th March 1993. This order has been challenged by defendant-petitioner by filing appeal which came to be rejected under the order of the 3rd Extra Assistant Judge, Vadodara, dated 20th October, 1999.

#. The learned counsel for the e petitioner contended relying on the document, annexure-A, that until the matter is decided by the arbitrator, the defendant-respondent has no right to encash the bank guarantee amounting to Rs.6 lacs. It has next been contended that the parties have agreed upon to refer the dispute, reg. two points, namely contract for Units No.2 and 6 at Vanakbori. The defendant-respondent is responsible for not appointing arbitrator and till that matter could be decided the defendant-respondent cannot be permitted to take benefit of its own wrong.

#. On the other hand, the learned counsel for defendant-respondent submitted that this revision application is wholly misconceived. Reliance on the minutes of the meeting held on 19th and 20th February 1986 is wholly misconceived. These minutes were never approved. It has next been contended that both the courts have concurrently held that it is not the case where the defendant-respondent be restrained from encashing the bank guarantee. The revision application itself is not maintainable. It has next been contended that it is a money matter and in case ultimately the plaintiff-petitioner succeeds in the suit, it can be compensated for any loss it suffered. It is not the case where by declining to grant interim relief, any irreparable injury will be caused to the plaintiff-petitioner.

#. Having given my thoughtful considerations to the

rival contentions made by learned counsel for the parties, I am in agreement with the learned counsel for the respondent that this revision application is wholly misconceived. Leaving apart whether the minutes of the meeting held between the petitioner and the respondent on 19th and 20th February 1986 have been confirmed or not or same have binding effect or not, the fact remains that in pursuance of the contract net amount of Rs.6 lacs were payable by plaintiff-petitioner to the defendant-respondent. It is difficult to appreciate what to say to understand what for this defendant-respondent has agreed to feel contended and satisfied for all these years not to make recovery of this amount of Rs.6 lacs. It felt satisfied and contended by keeping the bank guarantee with it. Bank guarantee does not mean that money has come in the pocked of defendant-respondent. Minutes of the meetings aforesaid are on record. From these proceedings it is no more in dispute that Rs.6 lacs were to be paid and where this amount has not been paid, the defendant has all the right to encash the bank guarantee. In the case where the bank guarantee has to be encashed, which is a document in between the bank and the defendant-respondent, no injunction normally has to be granted restraining the concerned party from encashing the same. This is a settled proposition of law and there cannot be any dispute to it. In the present case what precisely has been done by defendant-respondent but after a very long time though the same could have been done much earlier. Much emphasis has been laid by learned counsel for the petitioner that the defendant-respondent has not appointed arbitrator despite of repeated requests made by it. He referred few correspondence which is raised between the parties, but I do not find any merits in this contention. The document annexure-C on the record of this revision application clinches the issue. After 7th November, 1989, the plaintiff-petitioner has not given the name of General Manager who has to act as an arbitrator. In this letter it has been made very clear that in case reply to the same is not received by 15th November 1989, the defendant-respondent shall presume that the plaintiff-petitioner is not interested in arbitration and the defendant-respondent shall be free to take further necessary action to realise the amount of Rs.6 lacs which is recoverable from the plaintiff-petitioner. In fact, the defendant-respondent is sufferer of loss of interest for all these years, i.e. of about more than four years. This amount of Rs.6 lacs were kept by the petitioner and the respondent has been deprived of use of this amount and when it has taken the course to recover this amount, a suit has been filed and an attempt has been made to deprive this amount to the

defendant-respondent. On the record of this revision application, the petitioner has not produced any document wherein he has agreed to give name of some General Manager which is acceptable to it to act as an arbitrator. This position is also not disputed by learned counsel for the plaintiff-petitioner. Reliance on earlier documents is hardly of any substance. This is a clear case where the plaintiff-petitioner wants to take benefit of its own wrong. Otherwise also, it is a money matter and the amount of Rs.6 lacs admittedly is payable to the defendant-respondent by plaintiff-petitioner and in case injunction is not granted, it will not result in causing any irreparable injury to the plaintiff-petitioner. I do not find any prima-facie case in favour of plaintiff-petitioner, leaving apart the fact that other two ingredients which are necessary to be established for grant of temporary injunction are also not in favour of plaintiff-petitioner.

#. In the case, both the courts have not committed any error of jurisdiction or material irregularity in exercise of jurisdiction in passing of the impugned orders. It is a discretionary matter and where both the courts have in the facts of this case declined to exercise discretion in favour of the petitioner, no exception can be taken to the same. It is not a case where this court has to interfere with the order of the court below under section 115 of the Civil Procedure Code. In the result this civil revision application fails and the same is dismissed. Rule discharged. Interim relief earlier granted by this court stands vacated. No order as to costs.

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[sunil]